



# California Fair Political Practices Commission

February 17, 1989

Anne M. Russell  
Diehl and Rodewald, Attorneys at Law  
1011 Pacific Street  
P.O. Box 1207  
San Luis Obispo, CA 93406

Re: Your Request for Advice  
Our File No. A-88-484

Dear Ms. Russell:

This is in response to your letter requesting advice regarding the responsibilities of the Cambria Community Services District under the conflict-of-interest provisions of the Political Reform Act (the "Act").<sup>1/</sup>

## QUESTION

1. Are Boyle Engineering Corporation ("Boyle") and North Coast Engineering, Inc. ("North Coast") "consultants" to the district, with reporting and disqualification responsibilities under the Act?

2. Since C.T. Ranch is a source of income to Boyle and North Coast, is the district precluded from contracting for consultant services with Boyle and North Coast on a project which involves C.T. Ranch?

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

### CONCLUSION

1. A "consultant" is a natural person who provides certain services to a state or local governmental agency. Consequently, Boyle and North Coast are not consultants to the district.

However, the individual engineers employed by Boyle and North Coast who performed services for the district are consultants, and subject to the disclosure and disqualification provisions of the Act. If they are consultants, they are required to disqualify themselves from participation in decisions if it is foreseeable that the decisions will materially affect their sources of income or other economic interests.

2. Employees of Boyle and North Coast do not have to disqualify themselves from participating in decisions affecting C.T. Ranch, unless it is foreseeable that the decisions could have a material financial effect on their employer. Since Mr. Sylvester is sole owner of North Coast, he must also disqualify himself from participating in decisions if it is foreseeable that the decisions will have a material financial effect on client's of North Coast. If Mr. Sylvester's participation in decisions of North Coast is necessary for the operation of the corporation, the district would have to refrain from contracting for such services with North Coast.

### FACTS

Cambria Community Services District provides water and sewer services to residents in the northwestern portion of San Luis Obispo County. Current demand for water exceeds the supply available and the district is currently seeking new methods of augmenting the available water.

#### Boyle Engineering Corporation

On three occasions the district has contracted with Boyle Engineering Corporation ("Boyle") to provide engineers to perform technical services for district projects. All three contracts specified the services to be provided by Boyle. These services included analytical and technical work, with recommendations presented to the district.

The process followed by Boyle and the district in performance of the contracts was substantially the same under each contract. The district's general manager, John Stratford, described the process as follows:

Each report went through several drafts before being reduced to a final draft which went to the Board. When the preliminary draft of each report was received by Mr. Stratford, he had certain aspects reviewed by other independent contractors of the district. Mr. Stratford would also review the drafts, and with regard to the preliminary project design, Mr. Stratford spent a full day

reviewing the document with Boyle. There was also public review. Refinements were made to each report, based on the comments received from other district contractors, as well as Mr. Stratford and members of the public. Mr. Stratford made a recommendation to the district Board concerning each final report. His recommendation has been, to date, to accept the reports as written. The Board has in the past generally accepted the recommendations of Boyle, in that it has continued to pursue the joint project in light of Boyle's recommendation that it was feasible.

#### North Coast Engineering, Inc.

North Coast Engineering, Inc. ("North Coast") was retained by the district on a continuing basis on November 14, 1983. North Coast is owned by Steven J. Sylvester, who is the sole shareholder. The contract between North Coast and the district specified that North Coast was to rehabilitate a lift station, complete the Lodge Hill Water System and "perform other projects or services as mutually agreed."

Typically, North Coast has received requests from the district to provide engineering or surveying services for specific projects. For example, North Coast provides the design and construction documents to be put out to bid for capital improvement projects and manages and evaluates the bids when they are received. North Coast also makes recommendation as to whether the low bid is responsive to the plans and specifications and should be accepted and looks for arithmetic errors and projections. In addition, North Coast administers the contract for construction, inspects the construction of public projects and makes recommendation as to whether the district should accept the improvements when the project is finished.

Each month North Coast submits an itemized invoice to the district detailing services rendered. The district is to pay the invoice within ten days of receipt.

All North Coast's plans are reviewed by the district general manager who then recommends them to the district board of directors. While North Coast does not participate in any capacity at the board of directors meetings, its recommendations are usually accepted by the district. The district's general manager describes North Coast's contractual duties as services "normally provided by staff engineers."

#### C. T. Ranch

In 1985, the district and C.T. Ranch (the "ranch") entered into a written agreement to undertake a feasibility study of a joint project to divert unappropriated surface water in the San

Simeon Creek during the winter months. The plan was to construct a dam and reservoir on the ranch's property which was immediately adjacent to the district's boundaries, but located entirely outside the district. During the summer dry season stored water would be returned to the district by gravity flow to recharge the district's well field.

The project's costs were to be shared by the district and the ranch. In return the ranch was to receive water service in proportion to the ranch's share of the cost. However, once completed, the project facilities would be owned and operated solely by the district.

The district administered all the contracts. To implement the agreement between the district and the ranch, the district contracted with Boyle and North Coast to perform technical services in relation to the joint project. The costs of the services were shared equally between the district and the ranch.

At this time, the preliminary design and environmental review for the joint project has been completed, but the district has yet to accept the report. There exists no contractual obligation to continue with the project for either the district or the ranch. The district might submit the project to the voters for final approval before taking further action.

In April 1988, the ranch contracted with Boyle to perform a feasibility study for a project unrelated to the district or the joint project. In February 1988, the ranch contracted with North Coast for survey and mapping services also unrelated to the district or the joint project. Both contracts were to be performed solely in relation to the ranch's property which lies outside the boundaries of the district. Both Boyle and North Coast have received \$250 or more from the ranch within the last 12 months in connection with these contracts.

#### ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or otherwise using his official position to influence a governmental decision in which the official has a financial interest. This prohibition applies even where the public official is not the final decision-maker on the question before him. For example, the prohibition applies to decisions of a planning commission which must be reviewed and approved by the city council, and to decisions of the city council which are submitted to the voters for approval. (Skousen Advice Letter, No. A-88-162 and Benjamin Advice Letter, No. A-86-061, copies enclosed.)

Here, the final adoption of the joint project may take place through an election. However, the proposal to be presented to the voters is based on the analysis and recommendations of the district's staff and consultants. Moreover, the proposal cannot

be presented to the voters without an official act of the district. Thus, the public officials who participate in the development of the proposal and the decision to place it on the ballot are participating in a governmental decision. A public official with a financial interest in the outcome of the ultimate decision must disqualify himself or herself from participation in that decision.

A "public official" is defined in Regulation 18700 (copy enclosed) as follows:

(a) "Public official at any level of state or local government" means every natural person who is a member, officer, employee, or consultant of a state or local government agency.

\* \* \*

(2) "Consultant" shall include any natural person who provides under contract, information, advice, recommendation or counsel to a state or local government agency, provided, however, that "consultant" shall not include a person who:

(A) Conducts research and arrives at conclusions with respect to his or her rendition of information, advice, recommendation, or counsel independent of control and direction of the agency or any agency official, other than normal contract monitoring; and

(B) Possesses no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel.

Regulation 18700(a).

A "consultant" as defined in Regulation 18700(a)(2) must be a natural person and cannot be a corporation. Consequently, neither Boyle nor North Coast are "consultants" for purposes of the Act. The employees of Boyle and North Coast who work on district projects, however, are consultants if they provide information, advice, recommendation or counsel to the district, unless they are independent of agency control and direction and possess no authority with respect to any agency decision beyond the rendition of information, advice, recommendation or counsel. (Regulation 18700(a)(2); Hayden Advice Letter, No. A-84-319; Rose Advice Letter, No. A-84-306; and Kaplan Advice Letter, No. A-82-108, copies enclosed.)

### Boyle's Engineers

Boyle's engineers performed work for the district pursuant to three separate contracts. Each of these contracts specifically set forth Boyle's contractual duties and the periods in which the duties were to be performed. The engineers were to provide information, advice, recommendation and counsel to the district.

However, based on Mr. Stratford's description of the working relationship, the engineers did not perform these services independent of the control and direction of the district. The reports submitted to the district were normally reviewed by district staff, the public and other independent engineers. Suggestions for revisions were discussed with Boyle staff and the reports revised where appropriate. Thus, rather than acting independently to deliver a finished product, Boyle's engineers conducted research and rendered information subject to the control and direction of the district.

We conclude, therefore, that the Boyle staff who serviced the district contracts by providing information, advice, recommendation or counsel (i.e. not the clerks, secretaries, etc.) are consultants, and must comply with the disclosure and disqualification provisions of the Act.

### North Coast's Engineers

According to the materials you submitted, North Coast's engineers also provided information, advice, recommendation and counsel to the district. However, North Coast's contract with the district created a continuing relationship between the parties. The contract specifies that North Coast "shall furnish and perform necessary engineering and surveying services" for three separate projects and "perform other projects or services or as mutually agreed."

In addition, North Coast's contract does not specify a termination date or time for performance. Instead, the contract between North Coast and the district provides only for termination in the event of substantial failure by the other party to perform in accordance with the terms of the contract. Each month North Coast submits an itemized invoice to the district detailing services rendered; the district must pay the charges within 10 working days.

Finally, the district described the duties of North Coast's engineers as "duties normally provided by permanent staff engineers". North Coast's engineers administer construction contracts, manage the bidding process for the district on capital improvement projects and make recommendations as to which bid should be accepted. The recommendations of North Coast's engineers are normally accepted by the district.

The Commission has consistently held that where general services are provided to an agency on an on-going basis and the duties are those normally performed by agency staff, the provider is a consultant within the meaning of the Act. (Albuquerque Advice Letter, No. A-85-244; and Gifford Advice Letter, No. A-85-134, copies enclosed.)

Therefore, we conclude that the engineers of North Coast that provided information, advice, recommendation or counsel to the district pursuant to the contract with North Coast are consultants within the meaning of the Act and subject to the disqualification and disclosure provisions of the Act.

Direct Conflict of Interest

As consultants to the district, the engineers of Boyle and North Coast that provide consulting services to the district are prohibited from making, participating in making, or otherwise using their official position to influence a governmental decision in which they have a financial interest. (Regulations 18700 and 18700.1, copies enclosed.)

Section 87103 specifies that an official has a financial interest if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(c) Any source of income aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(a), (c) and (d).

The engineers providing services to the district are either employees or owners of Boyle and North Coast. If the engineers are employees, then Boyle and North Coast are sources of income to them and the engineers would be required to disqualify themselves from participating in a decision if it is foreseeable that the decision will materially affect their respective employer. (Section 87103.)

North Coast is also a source of income to Mr. Sylvester. In addition, as sole owner of North Coast, Mr. Sylvester has an

investment and ownership interest in the corporation. Thus Mr. Sylvester must disqualify himself from decisions which could materially affect North Coast and any client of North Coast that has been a source of \$250 or more in income to North Coast in the past 12 months. (Section 87103; and Section 82030.)

An effect is considered reasonably foreseeable if there is substantial likelihood that it will occur. Certainty is not required; however, if an effect is only a mere possibility, it is not reasonably foreseeable. (In re Thorne (1975) 1 FPPC Ops. 198, copy enclosed.)

Regulation 18702.1(a) provides that the effect of a decision on a source of income is material if the source is directly involved in a decision before the official's agency. Consequently, any engineer employed by Boyle or North Coast who provided consulting services to the district must disqualify himself or herself from any decision directly affecting his or her employer. For example, if a contract on which Boyle is bidding is being considered by the district, Boyle's employees could not act as consultants to the district concerning the matter, or in any way participate in the decision.

As the owner of North Coast, and a consultant to the district, Mr. Sylvester is required to disqualify himself from participation in governmental decisions directly affecting North Coast and any clients of North Coast who have provided at least \$250 in income to North Coast in the past twelve months. (Section 82030.) Thus, if the ranch has been a source of income to North Coast of at least \$250 in the past twelve months, Mr. Sylvester must disqualify himself from any district projects or decisions which could directly affect the ranch.

#### Indirect Conflicts of Interest

Consultants subject to the conflict-of-interest provisions of the Act are also required to disqualify themselves from participation in district decisions which indirectly have a material financial effect on a business entity that is a source of income to the consultant or in which the consultant has an investment or ownership interest. As sole owner of North Coast, Mr. Sylvester must, once again, disqualify himself from district decisions which would have a material financial effect on North Coast or its clients.

Whether the effect of an indirect decision is material depends on the financial size of the business entity. Regulation 18702.2 provides different standards of materiality which apply where a business entity is listed on the New York Stock Exchange or American Stock Exchange or Fortune Magazine Directory of the 500 largest U.S. Industrial Corporations (Regulation 18702.2(a) and (d)); or where the business entity is listed on the National Association of Securities Dealers National Market List (Regulation

18702.2(b), (e) and (f)); or where the business entity is listed on the Pacific Stock Exchange (Regulation 18702.2(c)).

Regulation 18702.2 (copy enclosed) provides that for a relatively small business entity, the effect of a decision is material where:

(1) The decision will result in an increase or decrease in the gross revenues for a fiscal year of \$10,000 or more; or

(2) The decision will result in the business entity incurring or avoiding additional expenses or reducing or eliminating existing expenses for a fiscal year in the amount of \$2,500 or more; or

(3) The decision will result in the increase or decrease in the value of assets or liabilities of \$10,000 or more.

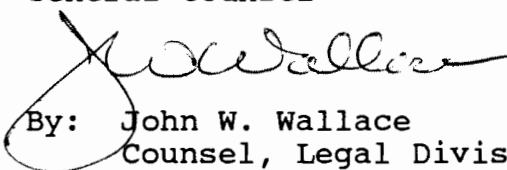
Thus, the consultant employees of Boyle or North Coast would be required to disqualify themselves from participation in any decision which could foreseeably increase or decrease the gross revenues, assets or liabilities of Boyle or North Coast by \$10,000 or more, or increase or decrease expenses by \$2,500.

Mr. Sylvester, as sole owner of North Coast, is required to disqualify himself from participating in or attempting to influence any decision which will indirectly materially affect North Coast or a source of income of \$250 or more to North Coast. (Section 82030.)

In addition to disqualification responsibilities, consultants to the district are required to file statements of economic interest pursuant to the district's conflict of interest code. If you have questions regarding these responsibilities, or any further questions regarding this matter, please feel free to contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel



By: John W. Wallace  
Counsel, Legal Division

DMG:JWW:plh

Enclosures

FPPC

DIEHL &amp; RODEWALD

A PROFESSIONAL CORPORATION

JOSEPH W. DIEHL, JR.  
 RODERICK A. RODEWALD  
 FREDERICK J. WOOD

Dec 30 10 03 AM '88

ATTORNEYS AT LAW  
 1011 PACIFIC STREET  
 P. O. BOX 1207

TELEPHONE:  
 (805) 541-1000  
 TELECOPIER:  
 (805) 541-6870

OF COUNSEL  
 ANNE M. RUSSELL

SAN LUIS OBISPO, CALIFORNIA 93406

December 27, 1988

Ms. Margarita Altamirano  
 Counsel, Legal Division  
 Fair Political Practices Commission  
 428 'J' Street, Suite 800  
 P.O. Box 807  
 Sacramento, CA 95804

RE: Request for Opinion

Dear Ms. Altamirano:

Roger C. Lyon, Jr., counsel for the Cambria Community Services District ("District") spoke with you in November, 1988, concerning a possible conflict of interest involving one of the District's consultants, Boyle Engineering Corporation. Because a similar question has arisen concerning another consultant, which Mr. Lyon has represented in the past, the District has retained this firm to request an opinion from the Fair Political Practices Commission ("FPPC") as to whether the two engineering firms that the District contracts with, Boyle Engineering Corporation ("Boyle") and North Coast Engineering, Inc., ("North Coast") have a conflict of interest which would preclude either or both of them from performing services for the District in the future. This firm has received information from the District, as well as from each firm, in preparation of this request letter. Previous opinions issued by the FPPC do not appear to resolve the questions raised by the District's situation.

Both of the firms have received \$250.00 or more from C.T. Ranch, Inc., within the last 12 months. The real issue is whether either firm is a "consultant" under the Political Reform Act, in light of the fact that C.T. Ranch, Inc., has been a source of income to the two firms, and therefore is precluded from performing future services for the District. An additional issue is whether either of the consultants "makes, participates in making or in any way attempts to use their official position to influence a governmental decision" under the Political Reform Act. Should the FPPC recognize any other basis of possible conflict of interest while reviewing this letter, please so advise the District.

#### Background

The District provides water and sewer services to its customers in a portion of northwestern San Luis Obispo County. Current demand for water exceeds supply. The District has been searching for a way to augment its water supply for some time.

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C.T. Ranch, Inc., ("Ranch") is the owner of a large parcel of property known as the Cambria Ranch, which is adjacent to the District, but is entirely outside the District's boundaries. The Ranch is seeking to develop its property, but needs a substantial water supply in order to do so. There are no present plans for the Ranch to become a part of the District.

There currently is unappropriated surface water flowing in San Simeon Creek at the District's well field property during winter months. The District and the Ranch felt this might meet the water needs of each party if a portion of the water could be diverted, pumped through a pipeline to a dam and reservoir to be constructed on the Ranch and adjacent property. In the summer dry season when the water table on the District's San Simeon Creek well field is low, stored water in the reservoir would be returned by gravity flow through the same pipeline to recharge the District's well field and pumped into the District's water distribution system. Although costs of the project would be shared, all project facilities would become owned and be operated by the District, with the Ranch to receive water service proportional to its cost share. The water diversion, storage and recharge project is hereafter referred to as the "Joint Project."

In 1985, the District and the Ranch entered into a written agreement to undertake a feasibility study of the Joint Project, including a geotechnical and economic analysis, with each party contributing equally to the cost. The parties agreed that the District would employ the consultant, subject to the prior consent of the Ranch. The District did not, and does not, have the staff able to perform the necessary technical services. The District subsequently entered into a contract with Boyle. The agreement between the District and the Ranch was amended several times to expand the scope of the study. Ultimately in 1987, the parties agreed to proceed with preliminary project design and preliminary environmental review of the Joint Project. The District contracted with Boyle and North Coast, as well as others, to complete these technical consulting services. The District administered all contracts, but the costs were equally shared by both parties, with a provision that the preliminary design and preliminary environmental review costs would be reallocated proportionate to future water allocation, should the Joint Project proceed to completion. Preliminary design and preliminary environmental review is essentially complete, although the District has not yet accepted the final draft of the preliminary design. Neither party is contractually bound to construct the Joint Project. The District is considering putting the final approval of the Joint Project to the voters.

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#### Consultants' Contracts with C.T. Ranch, Inc.

While the District and the Ranch were jointly pursuing the feasibility study and preliminary design and environmental review of the water diversion and storage project, the Ranch was also pursuing preliminary development of its property with the County of San Luis Obispo.

In April, 1988, the Ranch entered into an agreement with Boyle to perform a feasibility study for an interim water supply on the Ranch property, to permit construction to begin on the Ranch development. Boyle, as a result of the contracts with the District for the Joint Project was familiar with the topography and hydrology of the local run-off area on the ranch and the geotechnical conditions in the basin. Boyle completed the study for the Ranch in September, 1988. The final report proposed that a dam on San Simeon Creek on Ranch property be constructed in stages. Water from the interim project, or first stage, from local run-off on the ranch would be used entirely on the Ranch property for Ranch development purposes, until the second phase, main project is built, when all facilities and water would be administered by the District.

In February, 1988, the Ranch entered into an agreement with North Coast, for surveying and mapping services, relating to boundary establishment of the Ranch property and for a topographic mapping for planning purposes, for a proposed general plan amendment for development of the Ranch property. Additional services were provided on an as needed basis. In July, 1988, the Ranch and North Coast entered into another agreement which primarily involved the development of engineering studies and constraints analysis for the purpose of preparing an application for general plan amendment with the County of San Luis Obispo.

#### Boyle Engineering - Services Performed for the District

On November 25, 1985, the District, pursuant to its agreement with the Ranch, retained Boyle to perform a water resources feasibility study of the San Simeon Creek diversion and off-site dam project. Boyle Engineering Corporation is a corporation which has provided a variety of engineers to perform the technical services required under its contracts with the District. In the past, two of the engineers were shareholders of the corporation; at this time only one is. Boyle Engineering Corporation gathered and reviewed existing data and reports, investigated the site to determine the geology, the availability of a site for a dam, pipe line, siting of a distilling pond, etc.; the hydrology of San Simeon Creek determination of geotechnical and geologic characteristics of the site, (through a sub-contractor), an analysis of project elements; review of existing water rights and permits and a determination of which

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steps are required for additional water rights, permits and approvals; construction and other project cost estimates. A preliminary report was to be prepared summarizing all of the previous tasks. This contract was subsequently amended seven times, most recently in October, 1988, initially to expand the scope of the feasibility study, later to review alternative projects, and finally to provide preliminary project design. These contracts with Boyle are among those that the District and the Ranch agreed to equally share the costs on. In addition to the services performed in connection with the Joint Project, Boyle also evaluated the District's Waste Water Treatment Plant and disposal facilities. The latter service was performed pursuant to two separate contracts in 1987 and 1988. Copies of all contracts between the District and Boyle are included, including those related to the Waste Water Treatment Plant.

Boyle submitted a separate written report to the District's Board on the feasibility study, on the analysis of alternative projects, and on the preliminary project design. According to Mr. John Stratford, General Manager and District Engineer of the District, the process of producing each of these reports was multifaceted. Each report went through several drafts before being reduced to a final draft which went to the Board. When the preliminary draft of each report was received by Mr. Stratford, he had certain aspects reviewed by other independent contractors of the District. Mr. Stratford would also review the drafts, and with regard to the preliminary project design, Mr. Stratford spent a full day reviewing the document with Boyle. There was also public review. Refinements were made to each report, based on comments received from other District contractors, as well as Mr. Stratford and members of the public. Mr. Stratford made a recommendation to the District Board concerning each final report. His recommendation has been, to date, to accept the reports as written. The Board has in the past generally accepted the recommendations of Boyle, in that it has continued to pursue the Joint Project in light of Boyle's recommendation that it was feasible. However, no final decision on the Joint Project has been made. Should the Joint Project proceed, no decision of course has been made as to which engineering firm would do the final design.

#### North Coast Engineering - Services Performed for the District

North Coast's relationship with the District is somewhat different than that of Boyle. North Coast is a corporation, and Steven J. Sylvester is the sole shareholder of the company. He is a registered professional engineer. There are two contracts that govern the relationship between the District and North Coast. The first was entered into in 1983, and provided for engineering services to be provided by the firm to the District for two specific projects, and a third category entitled "other projects or services as mutually agreed." This contract was

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amended in 1987, to update the fee schedule. The contracts are still in effect. Typically, North Coast has received requests from the General Manager of the District, on projects or specific items, to provide engineering or surveying services. The requests are as varied as survey locations for water wells, or as complex as design and construction observation of capital improvements.

The District's General Manager advises this firm that North Coast provides a variety of services that are normally provided by staff engineers. On the capital improvement projects, North Coast provides the design and construction documents to be put out to bid, evaluates the bids when they are received, and makes recommendations as to whether the low bid is responsive to the plans and specifications. North Coast also looks for arithmetic errors and projections. In addition, North Coast administers the contract, inspects construction of public projects, and makes recommendations as to whether the District should accept the improvements when the project is final. According to Mr. Stratford, these types of recommendations are normally accepted by the Board.

On other projects, the District's General Manager normally decides which assignments are to be performed by North Coast. The General Manager then only gets involved on major decision making, when problems are encountered during construction or otherwise. With regard to plans and specifications that are prepared by North Coast, the engineer who prepares the plan signs them, as well as the District Engineer.

Mr. Stratford, the current General Manager of the District is also the District Engineer. Before the District hired Mr. Stratford, the previous General Manager was not a District Engineer. At that time, Steve Sylvester, the sole shareholder of North Coast, was the District Engineer. Since Mr. Stratford became the General Manager and District Engineer, Steve Sylvester has occasionally been designated the Acting District Engineer when Mr. Stratford is on vacation. According to both Mr. Stratford and Mr. Sylvester, Mr. Sylvester has never done anything in this capacity, and there is no contract between the District and Mr. Sylvester under which Mr. Sylvester has agreed to perform those services.

In addition to the 1983 and 1987 agreements between the District and North Coast, for engineering services, North Coast, by letter dated September 25, 1987, entered into an agreement to provide mapping services for the Joint Project, such as boundary control and aerial mapping.

Copies of the 1983 and 1987 agreements between the District and North Coast are included, as well as a copy of the September 25, 1987, letter of intent.

Ms. Margarita Altamirano  
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Finally, I have included copies of letters received by either myself or Mr. John Stratford, General Manager, in response to questions I posed to both Boyle Engineering Corporation and North Coast Engineering, Inc.

If you have any questions, or need any further information please contact me.

On behalf of the District, I would appreciate a response as soon as possible.

Thank you for your assistance.

Very truly yours,

DIEHL & RODEWALD

  
Anne M. Russell

AMR:kjs

Enclosures

cc: John Stratford, General Manager (w/o enclosures)  
Roger C. Lyon, Jr., District Counsel (w/o enclosures)  
Boyle Engineering Corp. (w/o enclosures)  
North Coast Engineering, Inc. (w/o enclosures)



# California Fair Political Practices Commission

January 5, 1989

Anne M. Russell  
Diehl & Rodewald  
Attorneys at Law  
P.O. Box 1207  
San Luis Obispo, CA 93406

Re: 88-484

Dear Ms. Russell:

Your letter requesting advice under the Political Reform Act was received on December 30, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact John Wallace, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

*Kathryn E. Donovan*

Kathryn E. Donovan  
Acting General Counsel

KED:ld

JOSEPH W. DIEHL, JR.  
RODERICK A. RODEWALD  
FREDERICK J. WOOD

OF COUNSEL  
ANNE M. RUSSELL

FPPC

DIEHL & RODEWALD  
A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

1011 PACIFIC STREET  
P. O. BOX 1207

SAN LUIS OBISPO, CALIFORNIA 93406

TELEPHONE:  
(805) 541-1000  
TELECOPIER:  
(805) 541-6870

DEC 30 10 03 AM '88

December 27, 1988

Ms. Margarita Altamirano  
Counsel, Legal Division  
Fair Political Practices Commission  
428 'J' Street, Suite 800  
P.O. Box 807  
Sacramento, CA 95804

RE: Request for Opinion

Dear Ms. Altamirano:

Roger C. Lyon, Jr., counsel for the Cambria Community Services District ("District") spoke with you in November, 1988, concerning a possible conflict of interest involving one of the District's consultants, Boyle Engineering Corporation. Because a similar question has arisen concerning another consultant, which Mr. Lyon has represented in the past, the District has retained this firm to request an opinion from the Fair Political Practices Commission ("FPPC") as to whether the two engineering firms that the District contracts with, Boyle Engineering Corporation ("Boyle") and North Coast Engineering, Inc., ("North Coast") have a conflict of interest which would preclude either or both of them from performing services for the District in the future. This firm has received information from the District, as well as from each firm, in preparation of this request letter. Previous opinions issued by the FPPC do not appear to resolve the questions raised by the District's situation.

Both of the firms have received \$250.00 or more from C.T. Ranch, Inc., within the last 12 months. The real issue is whether either firm is a "consultant" under the Political Reform Act, in light of the fact that C.T. Ranch, Inc., has been a source of income to the two firms, and therefore is precluded from performing future services for the District. An additional issue is whether either of the consultants "makes, participates in making or in any way attempts to use their official position to influence a governmental decision" under the Political Reform Act. Should the FPPC recognize any other basis of possible conflict of interest while reviewing this letter, please so advise the District.

#### Background

The District provides water and sewer services to its customers in a portion of northwestern San Luis Obispo County. Current demand for water exceeds supply. The District has been searching for a way to augment its water supply for some time.

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C.T. Ranch, Inc., ("Ranch") is the owner of a large parcel of property known as the Cambria Ranch, which is adjacent to the District, but is entirely outside the District's boundaries. The Ranch is seeking to develop its property, but needs a substantial water supply in order to do so. There are no present plans for the Ranch to become a part of the District.

There currently is unappropriated surface water flowing in San Simeon Creek at the District's well field property during winter months. The District and the Ranch felt this might meet the water needs of each party if a portion of the water could be diverted, pumped through a pipeline to a dam and reservoir to be constructed on the Ranch and adjacent property. In the summer dry season when the water table on the District's San Simeon Creek well field is low, stored water in the reservoir would be returned by gravity flow through the same pipeline to recharge the District's well field and pumped into the District's water distribution system. Although costs of the project would be shared, all project facilities would become owned and be operated by the District, with the Ranch to receive water service proportional to its cost share. The water diversion, storage and recharge project is hereafter referred to as the "Joint Project."

In 1985, the District and the Ranch entered into a written agreement to undertake a feasibility study of the Joint Project, including a geotechnical and economic analysis, with each party contributing equally to the cost. The parties agreed that the District would employ the consultant, subject to the prior consent of the Ranch. The District did not, and does not, have the staff able to perform the necessary technical services. The District subsequently entered into a contract with Boyle. The agreement between the District and the Ranch was amended several times to expand the scope of the study. Ultimately in 1987, the parties agreed to proceed with preliminary project design and preliminary environmental review of the Joint Project. The District contracted with Boyle and North Coast, as well as others, to complete these technical consulting services. The District administered all contracts, but the costs were equally shared by both parties, with a provision that the preliminary design and preliminary environmental review costs would be reallocated proportionate to future water allocation, should the Joint Project proceed to completion. Preliminary design and preliminary environmental review is essentially complete, although the District has not yet accepted the final draft of the preliminary design. Neither party is contractually bound to construct the Joint Project. The District is considering putting the final approval of the Joint Project to the voters.

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#### Consultants' Contracts with C.T. Ranch, Inc.

While the District and the Ranch were jointly pursuing the feasibility study and preliminary design and environmental review of the water diversion and storage project, the Ranch was also pursuing preliminary development of its property with the County of San Luis Obispo.

In April, 1988, the Ranch entered into an agreement with Boyle to perform a feasibility study for an interim water supply on the Ranch property, to permit construction to begin on the Ranch development. Boyle, as a result of the contracts with the District for the Joint Project was familiar with the topography and hydrology of the local run-off area on the ranch and the geotechnical conditions in the basin. Boyle completed the study for the Ranch in September, 1988. The final report proposed that a dam on San Simeon Creek on Ranch property be constructed in stages. Water from the interim project, or first stage, from local run-off on the ranch would be used entirely on the Ranch property for Ranch development purposes, until the second phase, main project is built, when all facilities and water would be administered by the District.

In February, 1988, the Ranch entered into an agreement with North Coast, for surveying and mapping services, relating to boundary establishment of the Ranch property and for a topographic mapping for planning purposes, for a proposed general plan amendment for development of the Ranch property. Additional services were provided on an as needed basis. In July, 1988, the Ranch and North Coast entered into another agreement which primarily involved the development of engineering studies and constraints analysis for the purpose of preparing an application for general plan amendment with the County of San Luis Obispo.

#### Boyle Engineering - Services Performed for the District

On November 25, 1985, the District, pursuant to its agreement with the Ranch, retained Boyle to perform a water resources feasibility study of the San Simeon Creek diversion and off-site dam project. Boyle Engineering Corporation is a corporation which has provided a variety of engineers to perform the technical services required under its contracts with the District. In the past, two of the engineers were shareholders of the corporation; at this time only one is. Boyle Engineering Corporation gathered and reviewed existing data and reports; investigated the site to determine the geology, the availability of a site for a dam, pipe line, siting of a distilling pond, etc.; the hydrology of San Simeon Creek determination of geotechnical and geologic characteristics of the site, (through a sub-contractor), an analysis of project elements; review of existing water rights and permits and a determination of which

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steps are required for additional water rights, permits and approvals; construction and other project cost estimates. A preliminary report was to be prepared summarizing all of the previous tasks. This contract was subsequently amended seven times, most recently in October, 1988, initially to expand the scope of the feasibility study, later to review alternative projects, and finally to provide preliminary project design. These contracts with Boyle are among those that the District and the Ranch agreed to equally share the costs on. In addition to the services performed in connection with the Joint Project, Boyle also evaluated the District's Waste Water Treatment Plant and disposal facilities. The latter service was performed pursuant to two separate contracts in 1987 and 1988. Copies of all contracts between the District and Boyle are included, including those related to the Waste Water Treatment Plant.

Boyle submitted a separate written report to the District's Board on the feasibility study, on the analysis of alternative projects, and on the preliminary project design. According to Mr. John Stratford, General Manager and District Engineer of the District, the process of producing each of these reports was multifaceted. Each report went through several drafts before being reduced to a final draft which went to the Board. When the preliminary draft of each report was received by Mr. Stratford, he had certain aspects reviewed by other independent contractors of the District. Mr. Stratford would also review the drafts, and with regard to the preliminary project design, Mr. Stratford spent a full day reviewing the document with Boyle. There was also public review. Refinements were made to each report, based on comments received from other District contractors, as well as Mr. Stratford and members of the public. Mr. Stratford made a recommendation to the District Board concerning each final report. His recommendation has been, to date, to accept the reports as written. The Board has in the past generally accepted the recommendations of Boyle, in that it has continued to pursue the Joint Project in light of Boyle's recommendation that it was feasible. However, no final decision on the Joint Project has been made. Should the Joint Project proceed, no decision of course has been made as to which engineering firm would do the final design.

#### North Coast Engineering - Services Performed for the District

North Coast's relationship with the District is somewhat different than that of Boyle. North Coast is a corporation, and Steven J. Sylvester is the sole shareholder of the company. He is a registered professional engineer. There are two contracts that govern the relationship between the District and North Coast. The first was entered into in 1983, and provided for engineering services to be provided by the firm to the District for two specific projects, and a third category entitled "other projects or services as mutually agreed." This contract was

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amended in 1987, to update the fee schedule. The contracts are still in effect. Typically, North Coast has received requests from the General Manager of the District, on projects or specific items, to provide engineering or surveying services. The requests are as varied as survey locations for water wells, or as complex as design and construction observation of capital improvements.

The District's General Manager advises this firm that North Coast provides a variety of services that are normally provided by staff engineers. On the capital improvement projects, North Coast provides the design and construction documents to be put out to bid, evaluates the bids when they are received, and makes recommendations as to whether the low bid is responsive to the plans and specifications. North Coast also looks for arithmetic errors and projections. In addition, North Coast administers the contract, inspects construction of public projects, and makes recommendations as to whether the District should accept the improvements when the project is final. According to Mr. Stratford, these types of recommendations are normally accepted by the Board.

On other projects, the District's General Manager normally decides which assignments are to be performed by North Coast. The General Manager then only gets involved on major decision making, when problems are encountered during construction or otherwise. With regard to plans and specifications that are prepared by North Coast, the engineer who prepares the plan signs them, as well as the District Engineer.

Mr. Stratford, the current General Manager of the District is also the District Engineer. Before the District hired Mr. Stratford, the previous General Manager was not a District Engineer. At that time, Steve Sylvester, the sole shareholder of North Coast, was the District Engineer. Since Mr. Stratford became the General Manager and District Engineer, Steve Sylvester has occasionally been designated the Acting District Engineer when Mr. Stratford is on vacation. According to both Mr. Stratford and Mr. Sylvester, Mr. Sylvester has never done anything in this capacity, and there is no contract between the District and Mr. Sylvester under which Mr. Sylvester has agreed to perform those services.

In addition to the 1983 and 1987 agreements between the District and North Coast, for engineering services, North Coast, by letter dated September 25, 1987, entered into an agreement to provide mapping services for the Joint Project, such as boundary control and aerial mapping.

Copies of the 1983 and 1987 agreements between the District and North Coast are included, as well as a copy of the September 25, 1987, letter of intent.

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Finally, I have included copies of letters received by either myself or Mr. John Stratford, General Manager, in response to questions I posed to both Boyle Engineering Corporation and North Coast Engineering, Inc.

If you have any questions, or need any further information please contact me.

On behalf of the District, I would appreciate a response as soon as possible.

Thank you for your assistance.

Very truly yours,

DIEHL & RODEWALD

  
Anne M. Russell

AMR:kjs

Enclosures

cc: John Stratford, General Manager (w/o enclosures)  
Roger C. Lyon, Jr., District Counsel (w/o enclosures)  
Boyle Engineering Corp. (w/o enclosures)  
North Coast Engineering, Inc. (w/o enclosures)